

1 KELLY A. JOHNSON
Acting Assistant Attorney General
2 Environment and Natural Resources Division
U.S. Department of Justice
3 950 Penn Ave., NW, Room 2718
Washington, DC 20530

4 CHERYL SMOUT
5 Environmental Enforcement Section
Environment and Natural Resources Division
6 U.S. Department of Justice
P.O. Box 7611
7 Washington, DC 20044-7611

8 DEBRA YANG
United States Attorney
9 Central District of California
1200 U.S. Courthouse
10 312 N. Spring St.
Los Angeles, CA 90012

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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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19 UNITED STATES OF AMERICA,
20

21 Plaintiff,

22 v.

23 RAYMOND AND DONNIS
HOLBROOK TRUST,

24 Defendant.
25
26
27
28

CIVIL ACTION NO. _____

CONSENT DECREE

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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the Administrator of
3 the United States Environmental Protection Agency ("EPA"), has concurrently filed a complaint
4 in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response,
5 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.
6

7 B. The United States in its complaint seeks, inter alia: payment of costs incurred by
8 EPA and performance of certain response work by the defendant at the Waste Disposal, Inc.
9 ("WDI") Superfund Site in Santa Fe Springs, California, consistent with the National
10 Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

11 C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C.
12 § 9621(f)(1)(F), EPA notified the California Department of Toxic Substances Control ("DTSC")
13 and the Hazardous Substance Account (collectively, "California") on April 10, 2001, of
14 negotiations with potentially responsible parties regarding the implementation of the remedial
15 design and remedial action for the Site, and EPA has provided California with an opportunity to
16 participate in such negotiations and be a party to this Consent Decree.
17

18 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA
19 notified the National Oceanic and Atmospheric Administration, the Department of the Interior,
20 and the natural resource trustees for the State of California on October 5 and 9, 2001, of
21 negotiations with potentially responsible parties regarding the release of hazardous substances
22 that may have resulted in injury to the natural resources under Federal and state trusteeship and
23 encouraged the trustees to participate in the negotiation of this Consent Decree.

24 E. The defendant that has entered into this Consent Decree ("Settling Defendant")
25 does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged
26 in the complaints, nor does it acknowledge that the release or threatened release of hazardous
27 substances at or from the Site constitutes an imminent or substantial endangerment to the public
28 health or welfare or the environment.

1 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on
2 the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the
3 Federal Register on July 22, 1987, 52 Fed. Reg. 27620.

4 G. In response to a release or a substantial threat of a release of hazardous substances
5 at or from the Site, EPA commenced on December 22, 1987, a Remedial Investigation and
6 Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

7
8 H. EPA completed a Remedial Investigation ("RI") Report in November, 1990, and
9 several potentially responsible parties ("PRPs") at the Site completed a Supplemental Feasibility
10 Study ("SFS") Report in May, 2001.

11 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of
12 the completion of the SFS and of the proposed plan for remedial action on May 31, 2001, in a
13 major local newspaper of general circulation. EPA provided an opportunity for written and oral
14 comments from the public on the proposed plan for remedial action. A copy of the transcript of
15 the public meeting is available to the public as part of the administrative record upon which the
16 Regional Administrator based the selection of the response action.

17
18 J. The decision by EPA on the remedial action to be implemented at the Site is
19 embodied in a final Amended Record of Decision ("Amended ROD"), executed on June 21,
20 2002, on which DTSC has given its concurrence. The Amended ROD includes a responsiveness
21 summary to the public comments. Notice of the final plan was published in accordance with
22 Section 117(b) of CERCLA.

23 K. The Parties recognize, and the Court by entering this Consent Decree finds, that
24 this Consent Decree has been negotiated by the Parties in good faith and implementation of this
25 Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated
26 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public
27 interest.

28
NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

1 II. JURISDICTION

2 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
3 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has
4 personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree
5 and the underlying complaint, Settling Defendant waives all objections and defenses that it may
6 have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not
7 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this
8 Consent Decree.
9

10 III. PARTIES BOUND

11 2. This Consent Decree applies to and is binding upon the United States and upon
12 Settling Defendant and its heirs, successors and assigns. Any change in ownership or corporate
13 status of Settling Defendant including, but not limited to, any transfer of assets or real or personal
14 property, shall in no way alter such Settling Defendant's responsibilities under this Consent
15 Decree, except as otherwise provided in Subparagraph 9.b.
16

17 IV. DEFINITIONS

18 3. Unless otherwise expressly provided herein, terms used in this Consent Decree
19 which are defined in CERCLA or in regulations promulgated under CERCLA shall have the
20 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are
21 used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the
22 following definitions shall apply:
23

24 "Amended Record of Decision" or "Amended ROD" shall mean the EPA Amended
25 Record of Decision at the Site, signed on June 21, 2002, by the Regional Administrator, EPA
26 Region IX, or his/her delegate, and all attachments thereto. The Amended ROD is attached as
27 Appendix A.
28

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and

1 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

2 “Consent Decree” shall mean this Decree and all appendices attached hereto (listed in
3 Section XX). In the event of conflict between this Decree and any appendix, this Decree shall
4 control.
5

6 “Day” shall mean a calendar day unless expressly stated to be a working day. “Working
7 day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any
8 period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,
9 or Federal holiday, the period shall run until the close of business of the next working day.

10 “DTSC” shall mean the California Department of Toxic Substances Control and any
11 successor departments or agencies.
12

13 “Effective Date” shall be the effective date of this Consent Decree as provided in
14 Paragraph 63.

15 “EPA” shall mean the United States Environmental Protection Agency and any successor
16 departments or agencies of the United States.
17

18 “Interest,” shall mean interest at the rate specified for interest on investments of the EPA
19 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
20 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest
21 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change
22 on October 1 of each year.

23 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous
24 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42
25 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
26

27 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral
28 or an upper case letter.

1 “Parties” shall mean the United States and the Settling Defendant.

2 “Past Response Costs” shall mean all costs, including, but not limited to, direct and
3 indirect costs, that the United States paid at or in connection with the Site through December 31,
4 2004, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through
5 such date.
6

7 “Performance Standards” shall mean those cleanup standards, standards of control,
8 response actions, and other substantive requirements and criteria or limitations set forth in the
9 Amended ROD.

10 “Plaintiff” shall mean the United States.
11

12 “Property” shall mean that portion of the WDI Superfund Site owned by Settling
13 Defendant and described more particularly in Appendix D.

14 “Remedial Action” shall mean the actions taken to implement the remedy for the Site
15 pursuant to the Amended ROD.
16

17 “Response Actions” shall mean any and all removal and remedial actions and all
18 enforcement activities related thereto.

19 “Response Costs” shall mean all costs, including, but not limited to, direct or indirect
20 costs, that the United States has paid or will pay in connection with the Site, that are not
21 inconsistent with the NCP, and all necessary costs that any other person has paid or will pay in
22 connection with the Site that are consistent with the NCP.
23

24 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et*
25 *seq.* (also known as the Resource Conservation and Recovery Act).

26 “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
27

28 “Settling Defendant” shall mean the Raymond and Donnis Holbrook Trust.

1 "Site" shall mean the WDI Superfund Site, encompassing approximately 43 acres, located
2 at Los Nietos Road at Greenleaf Avenue in Santa Fe Springs, Los Angeles County, California,
3 and depicted generally on the map attached as Appendix B.

4 "State" shall mean the State of California.

5 "United States" shall mean the United States of America.

6 "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of
7 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42
8 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.
9 § 6903(27); and (4) any "hazardous material" under California Health and Safety Code §§ 25316
10 and 25317.

11 "WDIG" shall mean the Waste Disposal, Inc. Group.

12 "WDI Special Account" shall mean the special account established at the Site by EPA
13 pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), within the EPA Hazardous
14 Substance Superfund.

15 "Work" shall mean all activities Settling Defendant is required to perform under this
16 Consent Decree, except those required by Section XVII (Retention of Records).

17 V. GENERAL PROVISIONS

18 4. Objectives of the Parties. The objectives of the Parties in entering into this
19 Consent Decree are to protect public health or welfare or the environment at the Site by the
20 implementation of and compliance with access agreements and institutional controls at the Site
21 by the Settling Defendant, and to resolve the claims of Plaintiff against Settling Defendant as
22 provided in this Consent Decree.

23 5. Commitments by Settling Defendant.

24 a. Settling Defendant shall perform the Work in accordance with this

1 Consent Decree and the Amended ROD, including, but not limited to, granting access rights and
2 implementing institutional controls in the form of an Environmental Restriction Covenant on the
3 Property at the Site, owned by Settling Defendant, as required herein. Settling Defendant shall
4 ensure compliance with the Environmental Restriction Covenant by any tenants or other persons
5 on the Property during any time that Settling Defendant owns or controls the Property. Settling
6 Defendant shall also reimburse the United States for Past Response Costs as provided in this
7 Consent Decree.

8
9 b. Settling Defendant shall make best efforts to cooperate with any persons
10 implementing all or any portion of the Remedial Action pursuant to the Amended ROD under
11 EPA's oversight. Best efforts shall include, but not be limited to, actions to facilitate any
12 relocations on or from the Property that may be required by EPA to implement the Remedial
13 Action.

14 6. Certification of Settling Defendants. By signing this Consent Decree, Settling
15 Defendant certifies that, to the best of its knowledge and belief, it has:

16 a. conducted a thorough, comprehensive, good faith search for documents,
17 and has fully and accurately disclosed to EPA, all information currently in its possession, or in
18 the possession of its officers, directors, employees, contractors, agents, trustees, or beneficiaries,
19 which relates in any way to the ownership, operation, or control of the Site, or to the ownership,
20 possession, generation, treatment, transportation, storage, or disposal of a hazardous substance,
21 pollutant, or contaminant at or in connection with the Site, except to the extent that Settling
22 Defendant has asserted that certain documents or information are privileged under the attorney
23 client privilege. If Settling Defendant has asserted such a privilege, Settling Defendant certifies
24 that it has provided Plaintiff with the following: (1) the title of the document, record, or
25 information; (2) the date of the document, record, or information; (3) the name and title of the
26 author of the document, record, or information; (4) the name and title of each addressee and
27 recipient; (5) a description of the contents of the document, record, or information; and (6) the
28 privilege asserted by Settling Defendant;

1 b. not altered, mutilated, discarded, destroyed or otherwise disposed of any
2 records, documents, or other information relating to its potential liability regarding the Site after
3 notification of potential liability or the filing of a suit against it regarding the Site; and

4 c. fully complied with any and all EPA requests for information regarding
5 the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).
6

7 7. Compliance With Applicable Law. All activities undertaken by Settling
8 Defendant pursuant to this Consent Decree shall be performed in accordance with the
9 requirements of all applicable federal and state laws and regulations. Settling Defendant must
10 also comply with all applicable or relevant and appropriate requirements of all federal and state
11 environmental laws as set forth in the Amended ROD. The activities conducted pursuant to this
12 Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

13 8. Permits.
14

15 a. This Consent Decree is not, and shall not be construed to be, a permit
16 issued pursuant to any federal or state statute or regulation.

17 9. Notice to Successors-in-Title.
18

19 a. At least 30 days prior to the conveyance of any interest in property located
20 within the Site including, but not limited to, fee interests, leasehold interests, and mortgage
21 interests, the Settling Defendant conveying the interest shall give the grantee written notice of (i)
22 this Consent Decree and (ii) the Environmental Restriction Covenant, attached as Appendix C.
23 At least 30 days prior to such conveyance, Settling Defendant shall also give written notice to
24 EPA of the proposed conveyance, including the name and address of the grantee, and the date on
25 which notice of the Consent Decree and Environmental Restriction Covenant, was given to the
26 grantee.

27 b. In the event of any such conveyance, the Settling Defendant's obligations
28 under this Consent Decree, including, but not limited to, its obligation to abide by the land/water

1 use restrictions described in Paragraph 11.a, shall continue to be met by the Settling Defendant,
2 except for those obligations described in Paragraphs 10, 11.a(13), 11.a(21), 11.a(22), 11.a(23),
3 11.a(24), and 18.c.

4
5 VI. ACCESS AND INSTITUTIONAL CONTROLS

6 10. Settling Defendant shall:

7 a. commencing on the date of lodging of this Consent Decree, provide the
8 United States, its representatives, including EPA and its contractors, and any PRPs conducting
9 Remedial Action at the Site, including their agents and contractors, with access at all reasonable
10 times to the Property for the purpose of conducting any response activity related to the Site
11 including, but not limited to, the following activities:

12 (1) Monitoring of investigation, removal, remedial or other response
13 actions at the Site;

14 (2) Verifying any data or information submitted to the United States or
15 DTSC;

16 (3) Conducting investigations relating to contamination at or near the
17 Site;

18 (4) Obtaining samples;

19 (5) Assessing the need for, planning, or implementing additional
20 response actions at or near the Site;

21 (6) Inspecting and copying records, operating logs, contracts, or other
22 documents maintained or generated by Settling Defendant or its agents, consistent with Section
23 XV (Access to Information);

24 (7) Assessing Settling Defendant's compliance with this Consent
25 Decree;

1 (8) Determining whether the Site or other property is being used in a
2 manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or
3 pursuant to this Consent Decree.

4 (9) Installing, monitoring, and maintaining liquid, groundwater, soil gas
5 and other wells or probes; and
6

7 (10) Installing, monitoring, and operating any monitoring and extraction
8 system, including liquids and gas extraction systems.

9 11. Land Use Restrictions.
10

11 a. Settling Defendant shall, commencing on the date of lodging of this
12 Consent Decree, refrain from using the Site and Property in any manner that would interfere with
13 or adversely affect the implementation, integrity, or protectiveness of the remedial measures
14 implemented pursuant to the Amended ROD. Such land use restrictions include, but are not
15 limited to:

16 (1) Placement of warning signs or other posted information shall be
17 allowed and, once posted, no removal or interference with such signs or information shall
18 be permitted.
19

20 (2) Placement of Site access controls, such as gates or fencing, shall be
21 allowed and shall not be damaged or circumvented.

22 (3) The Site or such other property shall not be used in any manner
23 that may interfere with or affect the integrity of the remedial cap or other components of
24 the remedy, as constructed pursuant to the Amended ROD.
25

26 (4) Construction not approved by EPA that impacts any of the
27 remedial capping or other remedy components shall not occur.

28 (5) No interferences with or alterations to the grading, vegetation and

1 surface water and drainage controls shall be made.

2 (6) Portions of the Site or Property underlain by Waste Materials or in
3 soil gas noncompliance areas shall not be regraded.

4 (7) Areas of asphalt or concrete pavement shall not be removed or
5 improved.

6 (8) No penetrations through or interferences (including, but not limited
7 to, utility trench excavations, excavations for fence posts, excavations for planting trees
8 or large bushes, foundation excavations, and foundation piles) with the remedial cap or
9 any other areas with remedial controls shall be made.

10 (9) Deep-rooting plants (plants whose root systems will penetrate more
11 than two feet below ground surface) shall not be planted.

12 (10) Settling Defendant or any other owner or user of the Property shall
13 obtain approval from EPA for settings of irrigation controls in areas underlain by Waste
14 Materials. Such settings shall not be changed without the prior written approval of EPA
15 in accordance with Paragraph 11.b.

16 (11) Drainage channels and pipes shall not be blocked, rerouted or
17 otherwise interfered with.

18 (12) No new openings shall be made in building floor slabs in buildings
19 located over Waste Materials or over soil gas noncompliance areas.

20 (13) Integrity of existing and future foundations shall be maintained in
21 areas underlain by Waste Materials and in soil gas noncompliance areas. All cracks or
22 damage in such foundations shall be reported to EPA and shall be repaired by the Settling
23 Defendant.

24 (14) Indoor gas controls shall not be circumvented.

1 (15) Indoor gas sensors or alarms shall not be turned off or interfered
2 with.

3 (16) Soil gas control systems shall not be turned off or interfered with.
4

5 (17) Monitoring points, including but not limited to groundwater
6 monitoring wells, soil gas probes, reservoir leachate collection wells, soil gas vents, and
7 survey monuments, shall not be blocked or otherwise obstructed.

8 (18) Monitoring wells shall not be opened; nothing shall be placed into
9 the monitoring wells.
10

11 (19) Liquids recovery systems, liquids treatment systems, and treated
12 liquids storage facilities shall not be turned off or interfered with.

13 (20) Groundwater supply or monitoring wells shall not be constructed.
14

15 (21) Owners of the Site or such other property shall disclose all
16 land/water use restrictions to all tenants on the property.

17 (22) Settling Defendant shall inform EPA of the identities of all tenants
18 on the Property.
19

20 (23) During construction, excavation, or grading of any type on the
21 Property, Settling Defendant shall take measures to ensure that there is no offsite
22 migration of dust, odors or organic vapors. During such activities, Settling Defendant
23 shall take appropriate measures to protect the health and welfare of onsite personnel and
24 workers and to prevent offsite impacts.

25 (24) Settling Defendant must obtain prior written approval for all
26 building or site modifications on the Property from EPA in accordance with Paragraph
27 11.b.
28

(25) Settling Defendant shall not excavate Waste Materials on the Site.

1 (26) No new construction shall occur on the Site without the prior
2 written approval of EPA in accordance with Paragraph 11.b and the following
3 requirements:

4 (a) New construction shall be supported by subsurface
5 explorations and analytical laboratory data to characterize the construction area
6 for the possible existence of Waste Materials.
7

8 (b) If Waste Materials are discovered in the construction area,
9 they shall be remediated or buildings and structures must be appropriately
10 designed to protect occupants.

11 (c) Appropriate worker and public health and safety
12 precautions, including but not limited to dust control, safety plans, and other
13 forms of worker protection, must be taken prior to approval of construction.
14

15 (27) Boreholes, foundation piles, or other subsurface penetrations into
16 the reservoir or any other area of the site which could create conduits allowing Waste
17 Materials to migrate to groundwater shall not be made.

18 (28) Construction workers shall be provided with appropriate personal
19 protective equipment while they are working at the site.
20

21 (29) Pesticides or herbicides shall not be applied to the capped areas of
22 the Site or to areas surrounding monitoring points, except as approved by EPA.

23 (30) Use of any septic tanks on the Property shall be discontinued and
24 such tanks shall be decommissioned in accordance with local regulations.
25

26 (31) The Site or such other property shall not be used or redeveloped for
27 residential use; use as a hospital, school for people aged 21 and under, or day care center;
28 or other similar uses by sensitive receptors.

1 b. Any person seeking an exception to the land use restrictions in Paragraph
2 10.a shall obtain the prior written approval of EPA. Any person seeking an exception shall
3 submit a request in writing to EPA, with all necessary supporting documentation (such
4 documentation may include appropriate design documents, work plans, and/or calculations). EPA
5 shall respond to such request within a reasonable time, by: 1) providing written approval for the
6 exception; 2) requesting further information in support of the request; 3) providing written
7 approval of the exception with modification; or 4) denying the request. The decision of EPA
8 shall be final and shall not be subject to the dispute resolution procedures of this Consent Decree,
9 except as provided in Paragraph 29, or to judicial review.

10 12. Environmental Restriction Covenant:
11

12 a. Settling Defendant shall, within 30 days of entry of this Consent Decree,
13 submit to EPA for review and approval, with respect to the Property, a current title insurance
14 commitment or some other evidence of title reasonably acceptable to EPA, which shows title to
15 the Property to be held by Settling Defendant and to be free and clear of all prior liens and
16 encumbrances, other than the liens held by EPA on the Property pursuant to Section 107(l) of
17 CERCLA, 42 U.S.C. § 9607(l) (except when those liens or encumbrances are approved by EPA,
18 or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of
19 such prior liens or encumbrances).

20 b. Within 15 days of EPA's approval and acceptance of the title evidence,
21 Settling Defendant shall update the title search and, if it is determined that nothing has occurred
22 since the effective date of the commitment to affect the title adversely, record the Environmental
23 Restriction Covenant attached as Appendix C with the Recorder's Office of Los Angeles County,
24 if it has not already been recorded. Within 30 days of recording the Environmental Restriction
25 Covenant, Settling Defendant shall provide EPA with a final title insurance policy, or other final
26 evidence of title acceptable to EPA, and a certified copy of the original recorded Environmental
27 Restriction Covenant showing the clerk's recording stamps.
28

 c. If, after review of the final title insurance policy, or other final evidence of

1 title, and the certified copy of the original recorded Environmental Restriction Covenant, EPA
2 determines that any portion of the Work has not been completed in accordance with this Consent
3 Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by
4 Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however,
5 that EPA may only require Settling Defendant to perform such activities pursuant to this
6 Paragraph to the extent that such activities are consistent with the scope of the remedy selected in
7 the Amended ROD. EPA will set forth in the notice a schedule for performance of such
8 activities consistent with the Consent Decree. Settling Defendant shall perform all activities
9 described in the notice in accordance with the specifications and schedules established therein,
10 subject to their right to invoke the dispute resolution procedures set forth in Section XI (Dispute
11 Resolution).

12
13 13. If EPA determines that institutional controls in the form of state or local laws,
14 regulations, ordinances or other governmental controls are needed to implement the remedy
15 selected in the Amended ROD, ensure the integrity and protectiveness thereof, or ensure non-
16 interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such
17 governmental controls.

18 14. Notwithstanding any provision of this Consent Decree, the United States retains
19 all of its information gathering, inspection, and access authorities and rights, as well as all of its
20 rights to require land use restrictions, including enforcement authorities related thereto, under
21 CERCLA, RCRA and any other applicable statute or regulations.

22 VII. REMEDY REVIEW

23
24 15. Periodic Review. Settling Defendant shall cooperate with the conduct of any
25 studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of
26 whether the Remedial Action is protective of human health and the environment at least every
27 five years as required by Section 121(c) of CERCLA and any applicable regulations.

28 16. EPA Selection of Further Response Actions. If EPA determines, at any time, that

1 the response actions undertaken pursuant to the Amended ROD are not protective of human
2 health and the environment, EPA may select further response actions for the Site in accordance
3 with the requirements of CERCLA and the NCP.

4 17. Opportunity To Comment. Settling Defendant and, if required by Sections
5 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on
6 any further response actions proposed by EPA as a result of the review conducted pursuant to
7 Section 121(c) of CERCLA and to submit written comments for the record during the comment
8 period.

9
10 18. Modification of the Land Use Restrictions.

11 a. If EPA determines that modifications or additions to the land use
12 restrictions are necessary to carry out and maintain the effectiveness of the remedy set forth in the
13 Amended ROD, EPA may require that such modifications or additions be incorporated in the
14 land use restrictions, provided, however, that a modification or addition may only be required
15 pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected
16 in the Amended ROD.

17
18 b. If Settling Defendant objects to any modification or addition determined
19 by EPA to be necessary pursuant to this Paragraph, Settling Defendant may seek dispute
20 resolution pursuant to Section XI (Dispute Resolution), Paragraph 29 (record review). The land
21 use restrictions shall be modified in accordance with final resolution of the dispute.

22 c. Settling Defendant shall implement any land use restrictions required by
23 any modifications or additions incorporated in the land use restrictions in accordance with this
24 Paragraph.

25
26 d. Nothing in this Paragraph shall be construed to limit EPA's authority to
27 require performance of further response actions as otherwise provided in this Consent Decree.
28

1 VIII. REPORTING REQUIREMENTS

2 19. All reports and other documents submitted by Settling Defendant to EPA which
3 purport to document Settling Defendant's compliance with the terms of this Consent Decree shall
4 be signed by an authorized representative of the Settling Defendant.
5

6 IX. PAYMENTS FOR RESPONSE COSTS

7 20. Payments for Past Response Costs.
8

9 a. Within sixty (60) days of the Effective Date, Settling Defendant shall pay
10 to EPA \$140,000 in partial payment for EPA's Past Response Costs.

11 b. Within 24 months of the Effective Date, Settling Defendant shall pay to
12 EPA another \$140,000, plus Interest accruing on that amount since the Effective Date, in
13 payment for EPA's Past Response Costs.
14

15 c. Payments under Subparagraphs 20.a and 20.b shall be made by FedWire
16 Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with
17 current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID Number 09-
18 C1, and DOJ Case Number 90-11-2-1000. Payment shall be made in accordance with
19 instructions provided to the Settling Defendant by the Financial Litigation Unit of the United
20 States Attorney's Office for the Central District of California following lodging of the Consent
21 Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will
22 be credited on the next business day.

23 d. At the time of payment, Settling Defendant shall send notice that payment
24 has been made to the United States, to EPA, and to the Regional Financial Management Officer,
25 in accordance with Section XVIII (Notices and Submissions).
26

27 e. The total amount to be paid by Settling Defendant pursuant to
28 Subparagraphs 20.a and 20.b shall be deposited in the WDI Special Account within the EPA
Hazardous Substance Superfund to be retained and used to conduct or finance response actions at

1 or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance
2 Superfund.

3 21. Within sixty (60) days of the Effective Date, EPA shall cause the liens recorded
4 on the Property by EPA pursuant to CERCLA Section 107(l) to be released.
5

6 X. FORCE MAJEURE

7 22. "Force majeure," for purposes of this Consent Decree, is defined as any event
8 arising from causes beyond the control of the Settling Defendant, or of any entity controlled by
9 Settling Defendant, that delays or prevents the performance of any obligation under this Consent
10 Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the
11 Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to
12 anticipate any potential force majeure event and best efforts to address the effects of any potential
13 force majeure event (1) as it is occurring and (2) following the potential force majeure event,
14 such that the delay is minimized to the greatest extent possible. "Force Majeure" does not
15 include financial inability to complete the Work.
16

17 23. If any event occurs or has occurred that may delay the performance of any
18 obligation under this Consent Decree, whether or not caused by a force majeure event, the
19 Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's
20 Alternate Project Coordinator or, in the event both of EPA's designated representatives are
21 unavailable, the Superfund Division Director, EPA Region IX, within five (5) days of when
22 Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter,
23 Settling Defendant shall provide in writing to EPA an explanation and description of the reasons
24 for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or
25 minimize the delay; a schedule for implementation of any measures to be taken to prevent or
26 mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such
27 delay to a force majeure event if it intends to assert such a claim; and a statement as to whether,
28 in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment
to public health, welfare or the environment. The Settling Defendant shall include with any

1 notice all available documentation supporting its claim that the delay was attributable to a force
2 majeure. Failure to comply with the above requirements shall preclude Settling Defendant from
3 asserting any claim of force majeure for that event for the period of time of such failure to
4 comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed
5 to know of any circumstance of which Settling Defendant, or any entity controlled by Settling
6 Defendant knew or should have known.

7
8 24. If EPA agrees that the delay or anticipated delay is attributable to a force majeure
9 event, the time for performance of the obligations under this Consent Decree that are affected by
10 the force majeure event will be extended by EPA for such time as is necessary to complete those
11 obligations. An extension of the time for performance of the obligations affected by the force
12 majeure event shall not, of itself, extend the time for performance of any other obligation. If
13 EPA does not agree that the delay or anticipated delay has been or will be caused by a force
14 majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees
15 that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in
16 writing of the length of the extension, if any, for performance of the obligations affected by the
17 force majeure event.

18 25. If the Settling Defendant elects to invoke the dispute resolution procedures set
19 forth in Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of
20 EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating
21 by a preponderance of the evidence that the delay or anticipated delay has been or will be caused
22 by a force majeure event, that the duration of the delay or the extension sought was or will be
23 warranted under the circumstances, that best efforts were exercised to avoid and mitigate the
24 effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 22
25 and 23, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to
26 be a violation by Settling Defendant of the affected obligation of this Consent Decree identified
27 to EPA and the Court.
28

1 XI. DISPUTE RESOLUTION

2 26. Unless otherwise expressly provided for in this Consent Decree, the dispute
3 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
4 under or with respect to this Consent Decree. However, the procedures set forth in this Section
5 shall not apply to actions by the United States to enforce obligations of the Settling Defendant
6 that have not been disputed in accordance with this Section.
7

8 27. Any dispute which arises under or with respect to this Consent Decree shall in the
9 first instance be the subject of informal negotiations between the parties to the dispute. The
10 period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless
11 it is modified by written agreement of the parties to the dispute. The dispute shall be considered
12 to have arisen when one party sends the other parties a written Notice of Dispute.

13 28. Statements of Position.
14

15 a. In the event that the parties cannot resolve a dispute by informal
16 negotiations under the preceding Paragraph, then the position advanced by EPA shall be
17 considered binding unless, within 15 days after the conclusion of the informal negotiation period,
18 Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on
19 the United States a written Statement of Position on the matter in dispute, including, but not
20 limited to, any factual data, analysis or opinion supporting that position and any supporting
21 documentation relied upon by the Settling Defendant. The Statement of Position shall specify
22 the Settling Defendant's position as to whether formal dispute resolution should proceed under
23 Paragraph 29 or Paragraph 30.

24 b. Within 15 days after receipt of Settling Defendant's Statement of Position,
25 EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any
26 factual data, analysis, or opinion supporting that position and all supporting documentation relied
27 upon by EPA. EPA's Statement of Position shall include a statement as to whether formal
28 dispute resolution should proceed under Paragraph 29 or 30. Within 10 days after receipt of

1 EPA's Statement of Position, Settling Defendant may submit a Reply.

2
3 c. If there is disagreement between EPA and the Settling Defendant as to
4 whether dispute resolution should proceed under Paragraph 29 or 30, the parties to the dispute
5 shall follow the procedures set forth in the paragraph determined by EPA to be applicable.
6 However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the
7 Court shall determine which paragraph is applicable in accordance with the standards of
8 applicability set forth in Paragraphs 29 and 30.

9 29. Formal dispute resolution for disputes pertaining to the selection or adequacy of
10 any response action and all other disputes that are accorded review on the administrative record
11 under applicable principles of administrative law shall be conducted pursuant to the procedures
12 set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action
13 includes, without limitation: the adequacy of the performance of response actions taken pursuant
14 to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute
15 by Settling Defendant regarding the validity of the Amended ROD's provisions.

16
17 a. An administrative record of the dispute shall be maintained by EPA and
18 shall contain all statements of position, including supporting documentation, submitted pursuant
19 to this Section. Where appropriate, EPA may allow submission of supplemental statements of
20 position by the parties to the dispute.

21 b. The Superfund Division Director, EPA Region IX, will issue a final
22 administrative decision resolving the dispute based on the administrative record described in
23 Paragraph 29.a. This decision shall be binding upon the Settling Defendant, subject only to the
24 right to seek judicial review pursuant to Paragraphs 29.c and d.

25 c. Any administrative decision made by EPA pursuant to Paragraph 29.b.
26 shall be reviewable by this Court, provided that a motion for judicial review of the decision is
27 filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt
28 of EPA's decision. The motion shall include a description of the matter in dispute, the efforts

1 made by the parties to resolve it, the relief requested, and the schedule, if any, within which the
2 dispute must be resolved to ensure orderly implementation of this Consent Decree. The United
3 States may file a response to Settling Defendant's motion.

4 d. In proceedings on any dispute governed by this Paragraph, Settling
5 Defendant shall have the burden of demonstrating that the decision of the Superfund Division
6 Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of
7 EPA's decision shall be on the administrative record compiled pursuant to Paragraph 29.a.
8

9 30. Formal dispute resolution for disputes that neither pertain to the selection or
10 adequacy of any response action nor are otherwise accorded review on the administrative record
11 under applicable principles of administrative law, shall be governed by this Paragraph.

12 a. Following receipt of Settling Defendant's Statement of Position submitted
13 pursuant to Paragraph 28, the Superfund Division Director, EPA Region IX, will issue a final
14 decision resolving the dispute. The Superfund Division Director's decision shall be binding on
15 the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant
16 files with the Court and serve on the parties a motion for judicial review of the decision setting
17 forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and
18 the schedule, if any, within which the dispute must be resolved to ensure orderly implementation
19 of the Consent Decree. The United States may file a response to Settling Defendant's motion.
20

21 b. Judicial review of any dispute governed by this Paragraph shall be
22 governed by applicable principles of law.

23 31. The invocation of formal dispute resolution procedures under this Section shall
24 not extend, postpone or affect in any way any obligation of the Settling Defendant under this
25 Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated
26 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed
27 pending resolution of the dispute as provided in Paragraph 38. Notwithstanding the stay of
28 payment, stipulated penalties shall accrue from the first day of noncompliance with any

1 applicable provision of this Consent Decree. In the event that the Settling Defendant does not
2 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in
3 Section XII (Stipulated Penalties).

4 XII. STIPULATED PENALTIES

5
6 32. Settling Defendant shall be liable for stipulated penalties in the amounts set forth
7 in Paragraph 33 to the United States for failure to comply with the requirements of this Consent
8 Decree specified below, unless excused under Section X (Force Majeure). "Compliance" by
9 Settling Defendant shall include completion of the activities under this Consent Decree identified
10 below in accordance with all applicable requirements of law and this Consent Decree and within
11 the specified time schedules established by and approved under this Consent Decree.

12 33. Stipulated Penalty Amounts.

13
14 a. The following stipulated penalties shall accrue per violation per day for
15 any noncompliance identified in Subparagraph 33.b:

16 <u>Penalty Per Violation Per Day</u>	17 <u>Period of Noncompliance</u>
18 \$200	1st through 14th day
19 \$400	15th through 30th day
20 \$1,000	31st day and beyond

21 b. Compliance Milestones.

- 22
23
24 (1) Failure to submit evidence of title to EPA as required by Paragraph
25 12.a.
26
27 (2) Violation of land use restrictions listed in Paragraph 11.a.
28
(3) Violation of access provisions of Paragraph 10.a.

1 (4) Failure to make payment of Past Response Costs as required by
2 Paragraph 20.

3 34. All penalties shall begin to accrue on the day after the complete performance is
4 due or the day a violation occurs, and shall continue to accrue through the final day of the
5 correction of the noncompliance or completion of the activity. However, stipulated penalties
6 shall not accrue: (1) with respect to a decision by the Superfund Division Director, EPA Region
7 IX, under Paragraph 29.b or 30.a of Section XI (Dispute Resolution), during the period, if any,
8 beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of
9 Position is received until the date that the Director issues a final decision regarding such dispute;
10 or (2) with respect to judicial review by this Court of any dispute under Section XI (Dispute
11 Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the
12 final submission regarding the dispute until the date that the Court issues a final decision
13 regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate
14 penalties for separate violations of this Consent Decree.
15

16 35. Following EPA's determination that Settling Defendant has failed to comply with
17 a requirement of this Consent Decree, EPA may give Settling Defendant written notification of
18 the same and describe the noncompliance. EPA may send the Settling Defendant a written
19 demand for the payment of the penalties. However, penalties shall accrue as provided in the
20 preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a
21 violation.
22

23 36. Settling Defendant shall pay all penalties accruing under this Section to the United
24 States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of
25 the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section
26 XI (Dispute Resolution). All payments to the United States under this Section shall be paid by
27 certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be
28 mailed to Mellon BankEPA - Region 9, Attn: Superfund Accounting, P.O. Box 371099M,
Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall

1 reference the EPA Region and Site/Spill ID #09-C1, the DOJ Case Number 90-11-2-1000/2, and
2 the name and address of the party making payment. Copies of checks paid pursuant to this
3 Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided
4 in Section XVIII (Notices and Submissions), and to David Wood, Chief, Cost Accounting, U.S.
5 EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105.

6 37. The payment of penalties shall not alter in any way Settling Defendant's obligation
7 to complete the performance of the Work required under this Consent Decree.

8 38. Penalties shall continue to accrue as provided in Paragraph 33 during any dispute
9 resolution period, but need not be paid until the following:

10
11 a. If the dispute is resolved by agreement or by a decision of EPA that is not
12 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15
13 days of the agreement or the receipt of EPA's decision or order;

14
15 b. If the dispute is appealed to this Court and the United States prevails in
16 whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be
17 owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in
18 Subparagraph c. below;

19 c. If the District Court's decision is appealed by any Party, Settling Defendant
20 shall pay all accrued penalties determined by the District Court to be owing to the United States
21 into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order.
22 Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within
23 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of
24 the account to EPA or to Settling Defendant to the extent that they prevail.

25
26 39. If Settling Defendant fails to pay stipulated penalties when due, the United States
27 may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall
28 pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made
pursuant to Paragraph 35.

1 40. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in
2 any way limiting the ability of the United States to seek any other remedies or sanctions available
3 by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon
4 which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA,
5 provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l)
6 of CERCLA for any violation for which a stipulated penalty is provided herein, except in the
7 case of a willful violation of the Consent Decree.

8 41. Notwithstanding any other provision of this Section, the United States may, in its
9 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to
10 this Consent Decree.

11
12 XIII. COVENANTS NOT TO SUE BY PLAINTIFF

13 42. United States' Covenant Not to Sue. In consideration of the actions that will be
14 performed and the payment that will be made by the Settling Defendant under the terms of the
15 Consent Decree, and except as specifically provided in Paragraphs 43, 44, and 46 of this Section,
16 the United States covenants not to sue or to take administrative action against Settling Defendant
17 pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to
18 future liability, these covenants not to sue shall take effect upon the receipt by EPA of the
19 payments required by Paragraph 20 of Section IX (Payments for Response Costs). With respect
20 to future liability, these covenants not to sue shall take effect upon certification of the completion
21 of the Remedial Action by EPA, which shall occur when Remedial Action for the Site has been
22 completed. These covenants not to sue are conditioned upon the satisfactory performance by
23 Settling Defendant of its obligations under this Consent Decree. These covenants not to sue
24 extend only to the Settling Defendant and do not extend to any other person.

25
26 43. Plaintiff's Pre-certification Reservations. Notwithstanding any other provision of
27 this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to,
28 the right to institute proceedings in this action or in a new action, or to issue an administrative
order seeking to compel Settling Defendant

1 a. to perform further response actions relating to the Site, or

2 b. to reimburse the United States for additional costs of response if, prior to
3 certification of completion of the Remedial Action:

4
5 (1) conditions at the Site, previously unknown to EPA, are discovered,

6 or

7 (2) information, previously unknown to EPA, is received, in whole or
8 in part,

9
10 and EPA determines that these previously unknown conditions or information together with any
11 other relevant information indicates that the Remedial Action is not protective of human health
12 or the environment.

13 44. Plaintiff's Post-certification Reservations. Notwithstanding any other provision
14 of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice
15 to, the right to institute proceedings in this action or in a new action, or to issue an administrative
16 order seeking to compel Settling Defendant

17
18 a. to perform further response actions relating to the Site, or

19 b. to reimburse the United States for additional costs of response if,
20 subsequent to certification of completion of the Remedial Action:

21
22 (1) conditions at the Site, previously unknown to EPA, are discovered,

23 or

24 (2) information, previously unknown to EPA, is received, in whole or
25 in part,

26
27 and EPA determines that these previously unknown conditions or this information together with
28 other relevant information indicate that the Remedial Action is not protective of human health or
the environment.

1 45. For purposes of Paragraph 43, the information and the conditions known to EPA
2 shall include only that information and those conditions known to EPA as of the date the
3 Amended ROD was signed and set forth in the Amended Record of Decision for the Site and the
4 administrative record supporting the Amended Record of Decision. For purposes of
5 Paragraph 44, the information and the conditions known to EPA shall include only that
6 information and those conditions known to EPA as of the date of certification of completion of
7 the Remedial Action and set forth in the Amended Record of Decision, the administrative record
8 supporting the Amended Record of Decision, the post-Amended ROD administrative record, or
9 in any information received by EPA pursuant to the requirements of this Consent Decree prior to
10 certification of completion of the Remedial Action.

11 46. United States' General reservations of rights. The United States reserves, and this
12 Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all
13 matters not expressly included within the United States' covenants not to sue. Notwithstanding
14 any other provision of this Consent Decree, the United States reserves all rights against Settling
15 Defendant with respect to:

16 a. claims based on a failure by Settling Defendant to meet a requirement of
17 this Consent Decree;

18 b. liability arising from the past, present, or future disposal, release, or threat
19 of release of Waste Material outside of the Site;

20 c. liability for damages for injury to, destruction of, or loss of natural
21 resources, and for the costs of any natural resource damage assessments;

22 d. criminal liability;

23 e. liability for violations of federal or state law which occur during or after
24 implementation of the Work; and

25 f. liability, prior to Certification of Completion of the Remedial Action, for
26
27
28

1 additional response actions that EPA determines are necessary to achieve Performance Standards,
2 but that cannot be required pursuant to Paragraph 18 (Modification of the Land Use Restrictions).

3 47. Notwithstanding any other provision of this Consent Decree, the United States
4 retains all authority and reserves all rights to take any and all response actions authorized by law.
5

6 XIV. COVENANTS BY SETTLING DEFENDANT

7 48. Covenant Not to Sue. Subject to the reservations in Paragraph 49, Settling
8 Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action
9 against the United States with respect to the Site or this Consent Decree, including, but not
10 limited to:
11

12 a. any direct or indirect claim for reimbursement from the Hazardous
13 Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507)
14 through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

15 b. any claims against the United States, including any department, agency or
16 instrumentality of the United States, under CERCLA Sections 107 or 113 related to the Site; or
17

18 c. any claims arising out of response actions at or in connection with the Site,
19 including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the
20 Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

21 Except as provided in Paragraph 55 (Waiver of Claim-Splitting Defenses), these
22 covenants not to sue shall not apply in the event that the United States brings a cause of action or
23 issues an order pursuant to the reservations set forth in Paragraphs 43, 44, and 46 (b) - (c), but
24 only to the extent that Settling Defendant's claims arise from the same response action, response
25 costs, or damages that the United States are seeking pursuant to the applicable reservation.
26

27 49. The Settling Defendant reserves, and this Consent Decree is without prejudice to,
28 claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the
United States Code, for money damages for injury or loss of property or personal injury or death

1 caused by the negligent or wrongful act or omission of any employee of the United States while
2 acting within the scope of his office or employment under circumstances where the United
3 States, if a private person, would be liable to the claimant in accordance with the law of the place
4 where the act or omission occurred. However, any such claim shall not include a claim for any
5 damages caused, in whole or in part, by the act or omission of any person, including any
6 contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall
7 any such claim include a claim based on EPA's selection of response actions, or the oversight or
8 approval of the Settling Defendant's activities. The foregoing applies only to claims which are
9 brought pursuant to any statute other than CERCLA and for which the waiver of sovereign
10 immunity is found in a statute other than CERCLA.

11 50. Nothing in this Consent Decree shall be deemed to constitute preauthorization of
12 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
13 § 300.700(d).
14

15 XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

16 51. Nothing in this Consent Decree shall be construed to create any rights in, or grant
17 any cause of action to, any person not a Party to this Consent Decree. The preceding sentence
18 shall not be construed to waive or nullify any rights that any person not a signatory to this decree
19 may have under applicable law. Each of the Parties expressly reserves any and all rights
20 (including, but not limited to, any right to contribution), defenses, claims, demands, and causes
21 of action which each Party may have with respect to any matter, transaction, or occurrence
22 relating in any way to the Site against any person not a Party hereto.
23

24 52. The Parties agree, and by entering this Consent Decree this Court finds, that the
25 Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or
26 claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed
27 in this Consent Decree.

28 a. The "matters addressed" in this Consent Decree are all response actions

1 taken or to be taken and all response costs incurred or to be incurred by the United States or any
2 other person with respect to the Site. The "matters addressed" in this Consent Decree do not
3 include those response costs or response actions as to which the United States, or its departments,
4 agencies or instrumentalities have reserved their rights under this Consent Decree (except for
5 claims for failure to comply with this Consent Decree), in the event that the United States asserts
6 rights against Settling Defendant coming within the scope of such reservations.

7
8 53. The Settling Defendant agrees that with respect to any suit or claim for
9 contribution brought by it for matters related to this Consent Decree, it will notify the United
10 States in writing no later than 60 days prior to the initiation of such suit or claim.

11 54. The Settling Defendant also agrees that with respect to any suit or claim for
12 contribution brought against it for matters related to this Consent Decree, it will notify in writing
13 the United States within 10 days of service of the complaint on the Settling Defendant. In
14 addition, Settling Defendant shall notify the United States within 10 days of service or receipt of
15 any Motion for Summary Judgment and within 10 days of receipt of any order from a court
16 setting a case for trial.

17 55. In any subsequent administrative or judicial proceeding initiated by the United
18 States for injunctive relief, recovery of response costs, or other appropriate relief relating to the
19 Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon
20 the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or
21 other defenses based upon any contention that the claims raised by the United States in the
22 subsequent proceeding were or should have been brought in the instant case; provided, however,
23 that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in
24 Section XIII (Covenants Not to Sue by Plaintiff).

25 26 XVI. ACCESS TO INFORMATION

27 56. Settling Defendant shall provide to EPA, upon request, copies of all documents
28 and information within its possession or control or that of its agents relating to activities at the

1 Site or to the implementation of this Consent Decree. Settling Defendant shall also make
2 available to EPA, for purposes of investigation, information gathering, or testimony, its
3 employees, agents, or representatives with knowledge of relevant facts concerning the
4 implementation of this Consent Decree.

5 57. Business Confidential and Privileged Documents.

6
7 a. Settling Defendant may assert business confidentiality claims covering
8 part or all of the documents or information submitted to Plaintiff under this Consent Decree to
9 the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
10 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential
11 by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
12 confidentiality accompanies documents or information when they are submitted to EPA, or if
13 EPA has notified Settling Defendant that the documents or information are not confidential under
14 the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be
15 given access to such documents or information without further notice to Settling Defendant.

16 b. The Settling Defendant may assert that certain documents, records and
17 other information are privileged under the attorney-client privilege or any other privilege
18 recognized by applicable law. If the Settling Defendant asserts such a privilege in lieu of
19 providing documents, it shall provide the Plaintiff with the following: (1) the title of the
20 document, record, or information; (2) the date of the document, record, or information; (3) the
21 name and title of the author of the document, record, or information; (4) the name and title of
22 each addressee and recipient; (5) a description of the contents of the document, record, or
23 information; and (6) the privilege asserted by Settling Defendant. However, no documents,
24 reports or other information created or generated pursuant to the requirements of the Consent
25 Decree shall be withheld on the grounds that they are privileged.

26
27 58. No claim of confidentiality shall be made with respect to any data, including, but
28 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
engineering data, or any other documents or information evidencing conditions at or around the

1 Site.

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3 XVII. RETENTION OF RECORDS

4 59. Until 10 years after the Settling Defendant has caused the Environmental
5 Restriction Covenant to be recorded, as required by Paragraph 12, Settling Defendant shall
6 preserve and retain all non-identical copies of records and documents (including records or
7 documents in electronic form) now in its possession or control or which come into its possession
8 or control that relate in any manner to its liability under CERCLA with respect to the Site,
9 provided, however, that Settling Defendant must retain, in addition, all documents and records
10 that relate to the liability of any other person under CERCLA with respect to the Site. Each of
11 the above record retention requirements shall apply regardless of any corporate retention policy
12 to the contrary.

13 60. At the conclusion of this document retention period, Settling Defendant shall
14 notify the United States at least 90 days prior to the destruction of any such records or
15 documents, and, upon request by the United States, Settling Defendant shall deliver any such
16 records or documents to EPA. The Settling Defendant may assert that certain documents, records
17 and other information are privileged under the attorney-client privilege or any other privilege
18 recognized by federal law. If the Settling Defendant asserts such a privilege, it shall provide the
19 Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of
20 the document, record, or information; (3) the name and title of the author of the document,
21 record, or information; (4) the name and title of each addressee and recipient; (5) a description of
22 the subject of the document, record, or information; and (6) the privilege asserted by Settling
23 Defendant. However, no documents, reports or other information created or generated pursuant
24 to the requirements of the Consent Decree shall be withheld on the grounds that they are
25 privileged.
26

27 61. Settling Defendant hereby certifies that, to the best of its knowledge and belief,
28 after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of
any records, documents or other information (other than identical copies) relating to its potential

liability regarding the Site since notification of potential liability by the United States regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XVIII. NOTICES AND SUBMISSIONS

62. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

and

Superfund Division Director
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105
Re: WDI Superfund Site

As to EPA:

Russell Mechem
EPA Project Coordinator
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105
Re: WDI Superfund Site

As to the Regional Financial Management Officer:

David Wood
Chief, Cost Accounting
United States Environmental Protection Agency
Region IX

75 Hawthorne St.
San Francisco, CA 94105

As to the Settling Defendant:

Raymond and Donnis Holbrook Trust
c/o Dan Holbrook
13900 Virginia Foothills Dr.
Reno, NV 89521

XVIII. EFFECTIVE DATE

63. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XIX. RETENTION OF JURISDICTION

64. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XI (Dispute Resolution) hereof.

XX. APPENDICES

65. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Amended ROD.

“Appendix B” is the description and map of the Site.

“Appendix C” is the Environmental Restriction Covenant.

“Appendix D” is the description and map of the Property owned by Settling Defendant.

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72. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

73. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

74. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS DAY OF _____, 20__.

United States District Judge

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Raymond and Donnis Holbrook Trust, relating to the Waste Disposal, Inc. Superfund Site.
3
4

5 **FOR THE UNITED STATES OF AMERICA**
6
7

8 8/12/05
9 Date

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

14
15 July 7, 2005
16 Date


17
18 CHERYL L. SMOUT
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
19
20

21 MONICA L. MILLER
Assistant United States Attorney
Central District of California
U.S. Department of Justice
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
22
23
24
25
26
27
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Raymond and Donnis Holbrook Trust, relating to the Waste Disposal, Inc. Superfund Site.
3

4 **FOR THE UNITED STATES OF AMERICA**

5
6 May 17, 2005
7 Date

8  Keith Takata)
9 Director, Superfund Division
10 U.S. Environmental Protection Agency
11 Region IX
12 75 Hawthorne St.
13 San Francisco, CA 94105

14 May 6, 2005
15 Date

16 Sarah E. Mueller ✓
17 Assistant Regional Counsel
18 U.S. Environmental Protection Agency
19 Region IX
20 75 Hawthorne St., ORC-3
21 San Francisco, CA 94105
22
23
24
25
26
27
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Raymond and Donnis Holbrook Trust, relating to the Waste Disposal, Inc. Superfund Site.
3

4 **FOR RAYMOND AND DONNIS HOLBROOK TRUST**
5
6
7

8 _____
9 Date

Signature: _____

Name (print): DONNIS H. HOLBROOK

Title: TRUSTEE

Address: 15620 MINNETONKA CIR.
RENO, NV. 89521

12
13 Agent Authorized to Accept Service on Behalf of Above-signed Party:
14
15

16 Name (print): _____

17 Title: _____

18 Address: _____

19 Ph. Number: _____
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